

Thank you, Mr. Chair. Thank you for holding this hearing. I appreciate the bipartisan and thorough nature in which you conducted the antitrust investigation into Amazon, Apple, Facebook, and Google in the last Congress.

During the hearings last year, we heard numerous examples of the exclusionary and predatory conduct that Apple, Amazon, Facebook, and Google have engaged in. For example:

- Google and Facebook colluded to control the ad marketplace,
- Amazon demanded proprietary information from small businesses who are forced to use their platform and then used the small businesses' data to make their own products and relegated the competitors lower in their search results, and,
- Apple exacting a 30% tax from its competitors like Spotify because these companies have no way for their customers to download their app other than going through Apple's app store or Google's play store.

Additionally, we have seen all four of the tech giants take unprecedented actions to silence political speech they disagree with, which almost exclusively means shutting down conservative speech. Just since early October 2020, we have seen:

- Google's YouTube platform delete numerous conservative channels,

- Facebook de-platform the President of the United States,
- Amazon kick Parler off its web hosting service, and,
- Google and Apple block Parler from their app stores.

Whether their conduct is directed at potential competitors or at politicians and citizens they don't agree with, these companies are able to act with complete impunity because of their status as monopolies.

The status quo is not working, and we must act. But the key is to make sure that we do not take a chainsaw to the whole economy, but rather we should implement a scalpel-like approach for Big Tech.

I believe there are several areas where we can work together on this: increasing funding for antitrust enforcement agencies, enacting data portability and interoperability requirements, and reforming the burden of proof in merger cases among others.

I would like to discuss these areas in more detail.

Data Portability

As we have discussed previously, I believe that consumer-oriented data portability and interoperability policies will further facilitate competition in the marketplace. Perhaps one of the most popular and pro-competitive actions Congress ever took was mandating mobile phone number portability in the Telecommunications Act of 1996. Consumers were empowered to shop between carriers without having to

worry about changing numbers. The result was a competitive and pro-consumer marketplace.

This is the model regarding data portability as it applies to online platforms. In the mobile phone space, companies fought to get your phone number and your business. In the digital world, companies want your data and the ability to monetize that data.

The core question before Congress in this area is “what data is portable?” For example, should a search term entered into Google by a consumer be portable data? What about data that is collected passively by Google like location data?

I think a Supreme Court case from 2018 gives an interesting bit of context here. In the *Carpenter* case, the Court noted that it is basically a necessity of modern life that we have mobile phones and carry them around with us. The Court found that just carrying your phone around cannot constitute consent for law enforcement to track your movements via cell tower pings without getting a warrant.

The type of location tracking that Google is doing is far more sophisticated and precise than cell tower pings. How is it possible that the type of micro-targeting and tracking Google engages in is permitted with essentially no benefit to the consumer? This type of data is incredibly valuable to companies and consumers should be able to control who has access to the data that results from literally every aspect of their lives being tracked.

They should also be able to reap benefits from their data besides “a better ad experience”. Maybe it’s just me, but I would rather get access

to publications behind a paywall, or airline miles, or hotel points rather than “a better ad experience” when I hand over my data. By making data portable, you put power back in the hands of consumers and leave it up to them who gets access to it and under what conditions.

The issue before Congress is what data is portable and what data isn't. Congress and the courts should not be in the business of calling balls and strikes, but we need to give some guidance regarding where the strike zone lies. We could pass legislation in this area or perhaps grant very specific rule-making authority to the FTC with the admonition that the rulemaking is limited to online platforms and any rulemaking on data portability must promote competition and be pro-consumer. This would not be a foundation to regulate the internet because we do not want to see mission creep and the agency needs to retain a focus on promoting competition and making rules consumer focused.

Interoperability

Similar to data portability, which is about the platform to consumer relationship, interoperability can also help competition in digital marketplaces. Interoperability is a time-honored practice in the tech industry that allows competing technologies to ‘speak’ to one another so that consumers can make a choice without being locked into any one technology.

In the same way that data portability helps markets function better, so can interoperability. But interoperability does not always work in uncompetitive digital markets where dominant platforms have locked consumers into their technology. On this issue, I agree with the Chair that there is room to explore. As with data portability, the devil will be in the details and we will want to ensure that any interoperability

mandates do not create spillover effects or result in heavy-handed regulation.

Line of business restrictions

Lastly, I think we may be able to find common ground in keeping Big Tech from getting bigger. In the Third Way report, I outlined that I did not agree with pursuing a “Glass-Steagall for the Internet” approach. I continue to believe that approach is one fraught with potential problems. I think much more robust enforcement by our law enforcement agencies with regards to mergers and acquisitions would accomplish essentially the same goal.

It is a big problem for consumers and market competition that these tech titans’ buying spree has continued unabated for essentially the past twenty years. Estimates vary but the number of deals involving digital platforms stands at approximately 750 over the past two decades. This M&A activity appears to have significantly strengthened the platforms’ market power and yet the vast majority of the deals were cleared by our antitrust agencies without scrutiny.

In addition to much more serious scrutiny of mergers and acquisitions, I think we should consider shifting the burden to the digital platforms to demonstrate that their proposed acquisition or merger is pro-competitive and pro-consumer.

Closing

In closing, we have to do something. Throwing partisan mud at one another is not going to work. There are people and businesses whose

lives are actually being destroyed by these tech giants. Complacency is not an option.

I look forward to working with you in these areas and others in a bipartisan fashion to make the digital marketplace more competitive and more consumer focused.

Mr. Chair, thank you for your collegiality, and I yield back.